

144927

Sauget Sites / Areas I & II / Yang
F. Hampel

HENRY J. DIAMOND
ALBERT J. BEVERIDGE, III
RANDOLPH H. HEMMELMAN
CHRISTOPHER M. BUCKLEY, JR.
STEPHEN J. GORDON
ALEXANDER W. STERCK
JOHN N. HANSON
ANDREW E. HISHKIN
WILLIAM N. MEDEMAN, JR.
CYNTHIA A. LEWIS
KARL B. ROUDOTAU
JOHN S. GUTTMANN
JOHN G. SCHROEDIN
DARY J. SMITH
BENJAMIN F. WILSON
ROBERT BRAGER
RICHARD S. DAVIS
THOMAS RICHICHI
J. DANIEL BERRY
DEAN M. CANNON
VIRGINIA S. A. BRECHT
VIRGINIA H. SIEGEL
THOMAS M. DEAROSA
DONALD J. PATTERSON, JR.
PAUL E. SHORD, III

LAW OFFICES
BEVERIDGE & DIAMOND, P. C.

SUITE 700
1350 I STREET, N.W.
WASHINGTON, D. C. 20005

(202) 789-6000

TELECOPIER (202) 789-6190
TELEX 3728538 BEVDIA WSH

OF COUNSEL
JOHN FRENCH III

BEVERIDGE & DIAMOND
SUITE 708
TWO EMBARCADERO CENTER
SAN FRANCISCO, CA 94111
(415) 387-3100

SPECIAL COUNSEL
A. JAMES BARNES

SUITE 1202
101 PARK AVENUE
NEW YORK, N. Y. 10178
(212) 857-3355

BEVERIDGE & DIAMOND
SUITE 400
ONE BRIDGE PLAZA
FORT LEE, N. J. 07024
(201) 585-6182

STEVEN F. RESCH
BRENDA M. JONES
MARK A. JONES
THOMAS C. J. JONES
KATHARINE C. STANUSKOVIC
RANDOLPH S. SEDALL
KENNETH S. SAUTMAN
CHARLES F. SAWYER
NANCY A. KESTERELLO
CHRISTOPHER W. KAHONEY
STEVEN M. KAHNEY
DEVARISTE CUNY
DAVID M. FRIEDLAND
ALISON A. KESTER
ST. SAUZA
SUSAN KOSTOFF OKUN
DOUGLAS S. WINTERFIELD
AARON M. BOSE
DEBORAH L. BURN
DEANNE L. AVERS-MCWARD
SUSAN M. EMMERSON
SHELLEY V. LUCAS
KAREN C. REYES
ALAN M. MCCONNELL
NANCY D. JAMMI
ELIZABETH S. COLLIER
TERRY V. GUILF
DAVID G. SAEGER
DIANE L. GILLESLEEVE
KATHLEEN BOEDERS
OLGA S. MORELAND
CHRIS S. RAVITT
DAVID A. KEAY
MARGARET A. LATTIN
DAVID S. LANGER
MARQUETTE A. CEPHAS
CARRIE A. WINEART

WRITER'S DIRECT DIAL NUMBER

*NOT ADMITTED IN D.C.

(202) 789-6055

March 6, 1990

BY TELECOPY

Paul E. Takacs, Project Manager
Illinois Environmental Protection Agency
P. O. Box 19276
Springfield, Illinois 62794-9276

Re: Sauget Sites (Areas I and II)
L1630200005 -- St. Clair County

Dear Paul:

It was a pleasure talking to you today.

We represent Empire Chem, Inc. ("Empire Chem"), a Nevada corporation, in the above-referenced matter. The Midwest Rubber Reclaiming Division of Empire Chem (the "Division") operates a rubber reclaiming facility in Sauget, Illinois (the "Facility") which Empire Chem purchased in 1986 from a wholly distinct entity, Midwest Rubber Reclaiming Company, ("Midwest Rubber"), formerly a Delaware corporation.

You have notified me and the Division of meetings to be held on March 22 and 23 in Springfield, Illinois to discuss the preparation of a remedial investigation and a feasibility study ("RI/FS") for the so-called Sauget Sites. By this letter I provide information regarding the successors to Midwest Rubber, who we believe are potentially liable for remediation of certain Sauget Sites and who therefore should receive notice of and an opportunity to attend those meetings. Supporting documents are attached and are referenced herein as exhibits.

001633

Paul E. Takacs

March 6, 1990

Page 2

Sale of Certain Assets from Midwest Rubber to Empire Chem

On September 29, 1986 Empire Chem^{1/} purchased certain assets of Midwest Rubber and of a related corporation (Hoover Hanes Rubber Corporation) for \$12,241,000. At that time (and until the time of its dissolution), Midwest Rubber was wholly owned by GIT Industries, Inc., a Delaware corporation ("GIT"). (See Exhibit A.) We understand that discharges from the Facility to Dead Creek Area B, if any, had ceased prior to that purchase. Similarly, we understand that the pits and lagoons at the treatment plant referred to as "Site O" for RI/FS purposes had been closed and capped prior to that purchase. Therefore, any waste contribution to those sites from the Facility apparently would have occurred while the Facility was owned by Midwest Rubber, not by Empire Chem.

Transfer of Midwest Rubber Assets to GIT's Shareholders

On or before November 7, 1986, Midwest Rubber transferred to GIT all of its interest in the promissory note it received from the above sale, and on November 7, 1986, GIT transferred all of its interest in that note to its three stockholders, Richard M. Cohen, Morris Weissman, and Stanley Kreitman. (Exhibit A.) On December 30, 1986, both Midwest Rubber and GIT were dissolved. (Exhibits B and C, attached.)

We have no direct knowledge of where the assets of Midwest and GIT were transferred upon their dissolution. However, we have received a letter referring to the GIT Liquidating Trust, whose beneficiaries are described as Messrs. Cohen, Weissman, and Kreitman, "as the former shareholders of GIT Industries, Inc., a dissolved corporation". (Exhibit D.)

Knowledge of the Sauget Sites Matter

It seems clear that, before the 1986 sale of assets, Midwest Rubber and GIT were aware of the alleged contamination at and its potential liability arising from the Sauget Sites. As you probably know, the Illinois Environmental Protection Agency ("IEPA") responded to contamination at Dead Creek as early as 1980 by fencing off areas that had smoldered. IEPA added Dead Creek to the State Remedial Action Priorities List in July 1984.

1/ At the time of the transaction, Empire Chem was named MBS Chem, Inc.; its name later was changed to Empire Chem on March 25, 1987.

Paul E. Takacs
March 6, 1990
Page 3

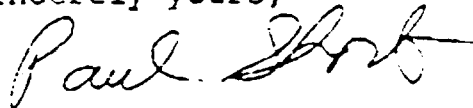
IPEA also began an investigation that by 1985 had expanded to include 15 other areas. In early 1986, members of the Village of Monsanto Sanitary Development and Research Association, including Midwest Rubber, had several rounds of discussions regarding remediation of sludges remaining in the treatment plant referred to as Site O.

As you also probably know, by mid-1986 the basic liability principles under the Comprehensive Environmental Response, Compensation, and liability Act of 1980 ("CERCLA", or "Superfund") and many analogous state statutes were relatively clear. Therefore it seems clear that the shareholders of GIT dissolved Midwest Rubber and GIT with actual knowledge of the potential liability of Midwest Rubber for investigation and remediation of at least some of the Sauget Sites. Under the law of many states, those who thus strip the assets of a corporation without making provision for known liabilities of the corporation can be held accountable for those liabilities.

Therefore we believe that the GIT Liquidation Trust or its three beneficiaries or both are potentially liable for investigation and remediation of at least some of the Sauget Sites. Therefore we believe that those parties should receive notice of the March 22 and 23 meetings, so that they have an opportunity to attend and to participate in settlement negotiations so as to minimize this potential liability. Addresses that may be appropriate for providing such notice are on Exhibits A, B, and D.

Please contact me with any comments or questions.

Sincerely yours,



Paul Shorb

PS/sp
Enclosure
0274100001780688PES.C2

001040

EXHIBIT A

MIDWEST RUBBER RECLAIMING COMPANY
345 Hudson Street
New York, New York 10014
(212) 741-8500

As of November 7, 1986

MBS Chem, Inc.
300 Plaza Drive
Binghamton, New York 13904

Attention: Michael W. Katz, Vice President

Dear Mr. Katz:

Midwest Rubber Reclaiming Company, a Delaware corporation ("Midwest"), as the original payee of the \$300,000 promissory note, dated September 29, 1986 (the "Note") of MBS Chem, Inc., a Nevada corporation ("MBS"), hereby advises you that Midwest has transferred all of its interest in the Note to its sole stockholder, GIT Industries, Inc., a Delaware corporation ("GIT"). GIT hereby advises you that, effective November 7, 1986, it has transferred all of its interest in the Note to the stockholders of GIT. GIT hereby requests, pursuant to the terms of the Note, that MBS execute new notes payable to the stockholders of GIT listed below in the principal amount set forth opposite their respective names:

<u>Stockholder</u>	<u>Address</u>	<u>Principal Amount</u>
Richard M. Cohen	601 North Faring Road Los Angeles, California 90077	\$240,000
Morris Weissman	345 Hudson Street New York, New York 10014	\$ 57,000
Stanley Kreitzman	345 Hudson Street New York, New York 10014	\$ 3,000
		<u>\$300,000</u>

Very truly yours,

MIDWEST RUBBER RECLAIMING COMPANY

By: 
Morris Weissman, President

GIT INDUSTRIES, INC.

By: 
Morris Weissman, President

001041

State of Delaware



Office of Secretary of State

I, MICHAEL HARKINS, SECRETARY OF STATE OF THE STATE OF
DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF DISSOLUTION, STOCK CORPORATION OF
MIDWEST RUBBER RECLAIMING COMPANY FILED IN THIS OFFICE ON THE
THIRTIETH DAY OF DECEMBER, A.D. 1960, AT 9 O'CLOCK A.M.

: : : : : : : :



Michael Harkins
Michael Harkins, Secretary of State

AUTHENTICATION 12475027

DATE 9/24/1960

989004010

WILMINGTON TRADING COMPANY

CERTIFICATE OF OFFICERS

BY

The undersigned, being the Secretary of Midwest Public Reclaiming Company (the "Corporation"), does hereby certify that the following are the names and residences of the Directors and Officers of the Corporation:

Directors

<u>Names</u>	<u>Residences</u>
Richard W. Cohen	601 North Farling Road Los Angeles, CA 90077
Stanley Kreitman	4 Chestnut Drive East Hills, N.Y. 11576
Morris Weisman	14 East 75th Street New York, N.Y. 10021

Officers

<u>Titles</u>	<u>Names</u>	<u>Residences</u>
Chairman	Richard W. Cohen	601 North Farling Road Los Angeles, CA 90077
President	Morris Weisman	14 East 75th Street New York, N.Y. 10021
Executive Vice President	John T. Gorman	11 Jeffrey Lane East Windsor, NJ 08520
Secretary	Howard Topol Roberts	126 East 34th Street New York, N.Y. 10017
Treasurer and Assistant Secretary	Spelden Carter	28 Green Hills Road East Brunswick, NJ 08816

Signed on December 15, 1986

Howard Topol Roberts
Howard Topol Roberts, Secretary

STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

Howard Topol Pohoritz, being duly sworn, deposes and says that he is the Secretary of Midwest Public Financing Company and that the foregoing written demand to Dissolution has been signed by the sole stockholder of said corporation.

Howard Topol Pohoritz

Howard Topol Pohoritz, Secretary

Subscribed and sworn to before
me on December 2, 1986.

[Signature]

Notary Public

001043

INDUSTRIAL CORP. SERV. - DIVER

866336154

FILED
DEC 30 1946

WITTEN CONSENT TO
DISSOLUTION
OF
MIDWEST SECURE PRELIMINARY COMPANY

The undersigned, being the sole stockholder of Midwest Secure Preliminary Company (the "Corporation"), does hereby consent by this writing to the dissolution of the Corporation.

The effective time of the dissolution herein authorized, and the time at which the dissolution of the Corporation shall become effective, shall be the date of the filing of this written consent.

Signed on December 1, 1946.

GIT INDUSTRIES, INC.

By: Morris Weissman
Morris Weissman, President

ATTEST:

Howard Popol
Howard Popol, Secretary



State of DELAWARE

Office of SECRETARY OF STATE

I, Michael Harkins, Secretary of State of the State of Delaware,
do hereby certify that the attached is a true and correct copy of
Certificate of Dissolution _____
filed in this office on December 30, 1986 _____



Michael Harkins
Michael Harkins, Secretary of State

BY _____

DATE January 3, 1990 _____

001845

866364353

WRITTEN CONSENT TO
DISSOLUTION
OF
GIT INDUSTRIES, INC.

FILED

DEC 30 1986

9/1/87



STANLEY KROTMAN

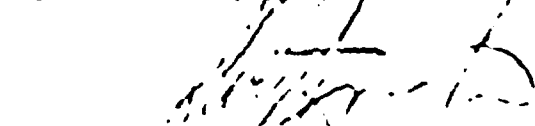
The undersigned, being all of the stockholders of GIT INDUSTRIES, INC. (the "Corporation"), do hereby consent by this writing to the dissolution of the Corporation.

The effective time of the dissolution herein authorized, and the time at which the dissolution of the Corporation shall become effective, shall be the date of the filing of this Written Consent.

Signed on December 10, 1986.


Richard M. Cohen


Morris Weissman


Stanley Krotman

001043

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.

Howard Topol Roberts, being duly sworn, deposes and says that he is the Secretary of GIT Industries, Inc. and that the foregoing Written Consent to Dissolution has been signed by all of the stockholders of said corporation.

Howard Topol Roberts
Howard Topol Roberts, Secretary

Subscribed and sworn to before
me, on December 11, 1986.

Notary Public

001047

CERTIFICATE OF OFFICER

OF

GIT INDUSTRIES, INC.

The undersigned, being the Secretary of GIT INDUSTRIES, INC. (the "Corporation"), does hereby certify that the following are the names and residences of the directors and officers of the Corporation:

Directors

Names

Richard M. Cohen

Stanley Kraitman

Morris Weissman

Residences

601 North Faring Road
Los Angeles, CA 90077

4 Chestnut Drive
East Hills, N.Y. 11576

14 East 75th Street
New York, N.Y. 10021

Officers

Titles

Chairman

Vice Chairman

President

Executive Vice President

Secretary

Treasurer and Assistant
Secretary

Names

Richard M. Cohen

Stanley Kraitman

Morris Weissman

John T. Gorman

Howard Topol Roberts

Sheldon Cantor

Residences

601 North Faring Road
Los Angeles, CA 90077

4 Chestnut Drive
East Hills, N.Y. 11576

14 East 75th Street
New York, N.Y., 10021

11 Jeffrey Lane
East Windsor, N.J. 08520

126 East 24th Street
New York, N.Y. 10010

26 Green Hills Road
East Brunswick, N.J. 08816

Signed on December 11, 1986

Howard Topol Roberts, Secretary

001643

NOV 29 1989

GIT LIQUIDATING TRUST
c/o Morris Weissman
345 Hudson Street
New York, New York 10014

November 16, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MBS Chem, Inc.
c/o Empire Chem, Inc.
300 Plaza Drive
Binghamton, NY 13903
Attention: Burton I. Koffman
William Whittaker

Re: Laskin/Poplar Oil Superfund Site

Dear Sirs:

This letter is being written by the GIT Liquidating Trust, the beneficiaries of which are Richard M. Cohen, Morris Weissman and Stanley Kreitman, as the former shareholders of GIT Industries, Inc., a dissolved corporation.

Please be advised that we are in receipt of the enclosed summons and complaint in United States v. ABS Industries, et al., which names as a defendant Midwest Rubber Reclaiming Co. n/k/a Empire Chem, Inc. We hereby forward these papers to you, as the named defendant and current owner of the facility.

In the course of our investigation into this matter, we have learned that a joint defense group, comprised of defendants who contributed only petroleum and petroleum-based products to the Laskin/Poplar Oil Superfund Site (the "Site") is being represented by the firm of Squire, Sanders & Dempsey, in Cleveland, Ohio. Charles McElwee, of Squire, Sanders & Dempsey, has indicated that the group would permit Empire Chem, Inc. to participate in the group, if it so desires. We recommend you consider joining with this group. Mr. McElwee can be reached at (216) 687-8732. We are enclosing, for your information, a copy of the Joint Representation Agreement, which you will be required

001140

to execute should you choose to participate. In addition, Squire, Sanders & Dempsey will require that you waive any claim of conflict of interest which you might have with any Squire, Sanders & Dempsey clients, and provide an affidavit attesting to the fact that Midwest Rubber Reclaiming Company contributed only petroleum and petroleum-based products to the Site. We are also enclosing, for your convenience, a draft affidavit which speaks to the use of petroleum products at the facility prior to your ownership. Should you wish, we will arrange for its execution.

By order of the Court, your time to answer the complaint in this action has been extended to December 3, 1989. You should, therefore, contact Squire, Sanders & Dempsey immediately, or otherwise retain counsel, so that an answer may be filed on your behalf by that date.

Should you have any questions, please contact me.

Sincerely,

GIR Liquidation, Trust

By: 

Morris Weissman, a Trustee

cc: Beveridge & Diamond, P.C.
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Attention: Albert J. Beveridge, III

001050